

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
DAVENPORT DIVISION

| | | |
|-------------------------------|---|---------------------------|
| CALVIN HAMMOCK, |) | No. 3:15-cv-00111-CRW-CFB |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | |
| |) | |
| NASA HEADQUARTERS, |) | |
| DEPARTMENT OF DEFENSE, |) | |
| SPACE EXPLORATION |) | |
| TECHNOLOGIES SPACE X, APPLE, |) | |
| BLACKBERRY (CURVE) |) | |
| CORPORATION, VIRGIN MOBILE, |) | |
| MEDIACOM WIFI, AMERICAN |) | |
| WATER IOWA, ANY YET UN- |) | |
| IDENTIFIED ENTITIES, PERSONS, |) | |
| SATELLITES, GOVT. AGENCIES, |) | |
| GOVT. TECHNOLOGIES, INTER |) | |
| AGENCIES, FUSION CENTER |) | |
| PARTICIPANT PARTNERS |) | |
| CORPORATIONS, COMPANIES, |) | |
| SOFTWARE USED BY AND WITH |) | |
| STATE ACTORS AND |) | |
| TEMPORARY STATE ACTORS, |) | |
| |) | |
| Defendants. |) | |

APPLE INC.'S MOTION TO DISMISS

Defendant Apple Inc. ("Apple"), for its Motion to Dismiss Plaintiff Calvin Hammock's ("Mr. Hammock") Complaint with Jury Demand ("Complaint") (*Dkt. No. 1*) pursuant to FED. R. CIV. P. 12(b)(1) and 12(b)(6), states:

1. Mr. Hammock filed the Complaint on October 16, 2015. In general, the

Complaint alleges injuries caused by signals sent to him through corporate Defendants' electronic devices starting on May 22, 2012 and asserts claims pursuant to 42 U.S.C. §§ 1983 and 1985.

2. Mr. Hammock's Amended Complaint (*Dkt. No. 3*) was stricken for non-compliance with L.R. 15 on December 3, 2015 (*Dkt. No. 6*).

3. All of the claims in the Complaint must be dismissed under FED. R. CIV. P. 12(b)(6) because the two-years statute of limitations period under IOWA CODE § 614.1(2) lapsed prior to filing of the Complaint.

4. To the extent that Mr. Hammock's claims under 42 U.S.C. § 1983 are asserted against Apple, they must be dismissed pursuant to FED. R. CIV. P. 12(b)(6) because the Complaint fails to allege sufficient facts to establish a plausible claim that Apple took any action under color of State law.

5. To the extent that Mr. Hammock's claims under 42 U.S.C. § 1985 are asserted against Apple, they must be dismissed pursuant to FED. R. CIV. P. 12(b)(6) because the Complaint fails to allege sufficient facts to establish a plausible claim that Apple participated in a conspiracy or possessed a discriminatory motive.

6. To the extent that the Complaint asserts an independent tort claim against Apple, it must be dismissed pursuant to FED. R. CIV. P. 12(b)(6) because the Complaint fails to allege sufficient facts to establish how Apple might have breached an arguable duty.

7. Finally, in addition to all of the above alternatives, the Complaint must be dismissed in entirety pursuant to FED. R. CIV. P. 12(b)(1) because the patently insubstantial allegations fail to invoke this Court's subject matter jurisdiction to hear such claims.

8. A Brief in Support of Motion is attached and incorporated by reference

pursuant to L.R. 7(d).

WHEREFORE Defendant Apple Inc. request that the Court dismiss Plaintiff's Complaint against Apple Inc. with prejudice and at Plaintiff's cost, and grant other additional relief the Court deems just and proper.

Date: December 8, 2015

/s/ Philip A. Burian

PHILIP A. BURIAN

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ATTORNEYS FOR APPLE INC.

CERTIFICATE OF SERVICE

I hereby certify that on December 8, 2015, I electronically filed the foregoing with the Clerk of Court using the ECF system, which will send notification of such filing to the following counsel of record:

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Attorney for Defendant MCC Iowa, LLC, d/b/a Mediacom

I hereby certify that on December 8, 2015, I transmitted the foregoing by U.S. mail to the following:

Calvin Hammock
5106 Brown Street
Davenport, IA 52806
Plaintiff

/s/ Philip A. Burian

Philip A. Burian